IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 2221 of 2007()

AGAINST THE ORDER IN MC 28 2007 IN
CC.102/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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PETITIONERS/SURETIES 1 & 2:

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1. PUSHPAVENI, W/O. PRANAVANANDAN
   ERAKKILTHALAM, ERANJIPALAM P.O.
   CHELAVOOR AMSOM, NADAKAVU.

2. JANAKI, W/O. RAJAPPAN
   NADUVEETTIL, METHAL, ERAKKILTHALAM
   OLAVANNA AMSOM, & DESOM, NALLALAM.

BY ADV. SRI.M.C.JOHN

RESPONDENTS:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/07/2007, A/W. CRMC NOS. 2222 & 2223/07 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos.2221, 2222 &
2223 of 2007

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Dated this the 11th day of July, 2007

O R D E R

The common petitioners in these three cases are sureties of three different accused in the same case, C.C. 102 of 2005 pending before the J.F.C.M. -II, Thamarasserry. Altogether there are three accused persons in that case. The petitioners had offered themselves as sureties for all the three accused and the accused were released on bail accepting the bonds executed by the accused with the petitioners herein as sureties.

2. On a particular date of posting when the case was posted for examination of witnesses, the accused were not present. Their counsel submitted that he is not in a position to proceed with the trial. He wanted to report no instruction and a local counsel was to enter appearance. For some technical reasons the formalities for such appearance could not be completed and therefore adjournment was prayed for. All the three accused did not appear before court on that day and the counsel who was appearing hitherto filed an application to excuse the absence of the accused. The learned Magistrate

rejected the applications and issued non-bailable warrants against the accused persons, but also did direct issue of notice to the sureties under Section 446 Cr.P.C. The petitioners have come to this Court to assail such notices issued to the sureties under Section 446 Cr.P.C. The petitions were initially presented as Crl.R.P. Later the court permitted the petitioners to convert them as Crl.M.Cs. Accordingly now it is prayed that powers under Section 482 Cr.P.C. may be invoked to quash the notices issued under Section 446 Cr.P.C.

3. Why should such powers be invoked? Why cannot the petitioners appear before the Magistrate and show cause that no order under Section 446 Cr.P.C. is liable to be passed at all? I find no satisfactory answers forthcoming. The learned counsel for the petitioners submits that it is very difficult for the petitioners, who are from the District of Wayanad to appear before the learned Magistrate at Thamarasserry. I fail to understand why the petitioners must appear personally before the learned Magistrate. Notice is issued under Section 446 Cr.P.C. and appearance through counsel is perfectly sufficient - especially in the facts and circumstances of this case. I do not find any reason to justify the invocation of the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. It is for the petitioners to

appear before the learned Magistrate either in person or through counsel and show cause why no order should be passed under Section 446 Cr.P.C. I have no reason to assume that the learned Magistrate would insist on personal physical presence of the sureties in response to such notices under Section 446 Cr.P.C. The learned Magistrate must permit the petitioners to appear through counsel in response to such notices and show cause.

4. These Crl.M.Cs. are dismissed with the above observations.

(R. BASANT)
Judge

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